IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4973 of 1999

For Approval and Signature: Sd/-

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHBOOBMIYA ANINMIYA MALEK

Versus

DISTRICT REGISTRAR CO OP SOCIETIES

Appearance:

MR SHIRISH JOSHI for MR BAIJU JOSHI for Petitioner

MR HASMUKH PATEL, AGP for Respondents No. 1-3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 08/03/2002

C.A.V. JUDGEMENT

1. The petitioner of Revision Application No.139 of 1999 under Section 155 of the Gujarat Co-operative Societies Act, 1961 (For short "the Act") decided by respondent No.3 has, by filing this writ petition under Articles 226 and 227 of the Constitution of India, challenged the following three orders.

a. an order dated 20/12/1998 passed under Section 32 of the Act by respondent No.1 (Annexure-A).

b. an order dated 15/4/1999 passed by the respondent No.2 in Revision Application No.3 of 1999 (Annexure-B).

c. an order dated 7/7/1999 passed by the respondent No.3 in Revision Application No.139 of 1999 (Annexure-C).

2. The facts leading to this present writ petition in a nutshell are as follows :-

2.1 On or before 14/9/1998, the petitioner was a Chairman of Raoli Dudh Utpadak Sahakari Mandali Limited of village Raoli (Taluka : Petlad, District : Anand) (For short "the Mandali"). One Sadik ali Mahek ali Saiyad of village Savali, Taluka : Petlad, District : Anand, who was a member of the Executive Committee of Savali Dudh Utpadak Sahakari Mandali Limited made an application to respondent No.1, alleging that one Shri Mohmmad Sajid Malek, who is serving as tester in the Mandali, is brother of the petitioner, who is a Chairman of that Mandali and, therefore, the petitioner has become disqualified for holding a post of Chairman of the Mandali, in view of Byelaw 30(5) of the Bye-Laws of the Mandali read with explanation to Section 6 of the Act. On receipt of such application, the respondent No.1 called for remarks, in detail from the Mandali. In reply to letter dated 17/9/1998 of the respondent No.1, the Mandali submitted its reply dated 25/9/1998 in detail. Thereafter, respondent No.1 issued a show cause notice dated 5/10/1998 to the present petitioner as to why he should not be removed from the office of a member of the Executive Committee of the Mandali. In reply to such show cause notice, the petitioner submitted his reply dated 26/10/1998 to the respondent No.1. Thereafter, after examining the documents on record, the respondent No.1 passed an order dated 20/12/1998 (Annexure-A), by which the present petitioner was removed from the office of a member of the Executive Committee of the Mandali on the ground that the petitioner has become disqualified to continue the office of a member of the Executive Committee of the said Mandali, in view of Byelaw 30(5) of the Byelaws of the Mandali, as Shri Mohmmad Sajid Malek, the brother of the present petitioner was serving as tester in that very Mandali of which petitioner was a Chairman.

2.2 Being aggrieved against and dissatisfied with the

said order dated 20/12/1998 of respondent No.1 (Annexure-A), the present petitioner preferred one Revision Application No.3 of 1999 under Section 155 of the Act to respondent No.2. The respondent No.2, after giving opportunity of being heard to the petitioner and after hearing the arguments of the learned advocate Mr.Gandhi for the present petitioner and after making perusal of the record, the respondent No.2, by his order dated 15/4/1999 (Annexure-B) dismissed that Revision Application No.3 of 1999, preferred by the present petitioner.

2.3 Being aggrieved against and dissatisfied with the said order dated 15/4/1999 of respondent No.2 (Annexure-B), the present petitioner, by filing a Revision Application No.139 of 1999 under Section 155 of the Act, carried the matter further to respondent No.3. After hearing the arguments of the learned Advocate Smt. Vora, who appeared for the present petitioner and after examining the order of respondent No.1 and order of respondent No.2, the respondent No.3 passed an order dated 7/7/1999 refusing to entertain the said Revision Application No.139 of 1999 preferred by the present petitioner.

2.4 Being aggrieved against and dissatisfied with the said order dated 7/7/1999 of respondent No.3 (Annexure-C), the present petitioner has filed this writ petition. Though Articles 226 and 227 are stated in cause title of the petition, in fact, this writ petition is filed under Article 227 of the Constitution of India.

3. On 13/7/1999, this Court (Coram : M.R.Calla,J.) issued "Rule" and on that day, an ad-interim order was passed to the effect that the petitioner shall be allowed to function as Chairman of the Mandali, in case he has been continued to function as Chairman, so far. That order of an ad-interim relief has been continued from time to time till, this writ petition is taken up for final hearing on 20/2/2002.

4. Heard Mr.Shirish Joshi, learned advocate for and on behalf of Mr.Baiju Joshi, learned advocate for the petitioner and Mr.Hasmukh Patel, learned AGP for the respondents. None of the respondents has filed affidvit-in-reply.

5. Admittedly, the Mandali is a registered under Section 9(a) of the Act. The Mandali has got registered its own Byelaws with the Office of the respondent No.1. It is an admitted fact that on or before or around

14/9/1998, the present petitioner was a Chairman of the Mandali. The Chairman is being elected from amongst the members of the Executive Committee of the Mandali, meaning thereby, the petitioner was a first member of the Executive Committee of the Mandali and, thereafter, from amongst the members of the Executive Committee of the Mandali, he was elected as a Chairman of the Committee for one year. The member of the Executive Committee, who is elected as Chairman of the office is elected for one year. The petitioner has challenged an order of respondent No.1, who removed the petitioner from the office of the member of the Executive Committee of the Mandali on the ground that petitioner has become disqualified for continuing as a member of the Executive Committee of the Mandali, as his real brother Shri Mohmmad Sajid Malek is serving as a tester in that very Mandali, of which the petitioner was elected as a Chairman.

6. On the basis of an application dated 14/9/1998 of one Sadik ali Mahek ali Saiyad, the respondent No.1 processed the subject matter of that application and after calling for an explanation of the Mandali as well as explanation from the petitioner, the respondent No.1 passed an order dated 20/12/1998 (Annexure-A) by placing reliance on Byelaw 30(5) of the Byelaws of the Mandali.

7. Mr.Slhirish Joshi, learned advocate for the petitioner has supplied to this Court a booklet of Byelaws of the Mandali for perusal. Rule 32 of the Gujarat Co-operative Societies Rules, 1965 (For short "the Rules") speaks for the qualifications for the members of the Committee. As per Rule 32(1)(c) of the said Rules, every member of a Society, who is entitled to vote shall be eligible for appointment as a member of a Committee thereof, if, he is not otherwise disqualified for appointment as such member. Admittedly, respondent No.1 passed an order, which is also the subject matter of this writ petition is passed under Section 76B of the Act. On reading that order dated 20/12/1998 of respondent No.1 (Annexure-A), it is crystal clear that respondent No.1 has passed an order under Section 76B of the Act by taking aid of said Rule 32 of the Rules read with Byelaw 30(5) of the Byelaws of the Mandali. Byelaw 30(5) of the Mandali speaks that a member of the Mandali will be eligible for being elected as a member of the Executive Committee provided, he fulfills the different qualifications enumerated in Clause (1) to (10), Clause 5 of the Byelaw 30 speaks that that person should not be a paid employee of the Mandali or any other Mandali or he should not be "a member of the family" of a paid employee

of that Mandali. In Byelaw 30(5), it is also clarified as to who can be said to be "a member of the family". The rule making authority has referred to Section 6 of the Act in this Byelaw 30(5) of the Byelaws of the Mandali. There is no dispute for the fact that Shri Mohmmad Sajid Malek is a brother of the present petitioner and that Shri Mohmmad Sajid Malek is a paid employee of the Mandali because, he is serving as tester in the Mandali of which the petitioner is a Chairman. And, therefore, the respondent No.1 has by taking help of definition of "a member of the family" defined in explanation to Section 6 of the Act, held that the present petitioner is not qualified to become a member of the Mandali because in that very Mandali, the brother of the petitioner is serving as tester. Explanation to Section 6 of the Act, speaks as who can be said to be "a member of the family". As per explanation to Section 6 of the Act the expression "member of family" means a wife, husband, father...., brother, sister.... and, therefore, brother of the petitioner is a member of family of the petitioner. As brother of the petitioner was a paid employee of the very Mandali, the present petitioner was not qualified to become a member in view of Byelaw 30(5) of the Byelaws read with Rule 32(1)(c) of the Rules.

8. Under the circumstances, the order passed by the respondent No.1 is according to law. It cannot be said that the respondent No.1 had no jurisdiction to pass such order, because he has passed this order under Section 76B of the Act. This order cannot be said to be a "perverse" order because the order is passed on admitted fact for which the petitioner cannot deny. In the circumstances, the order cannot be said to be an order passed on "no evidence". Under the circumstances, the order of respondent No.1 (Annexure-A), which has been confirmed by the respondent Nos.2 and 3 in exercise of powers conferred on them under Section 155 of the Act cannot be disturbed in this writ petition.

9. Inspite of the aforesaid legal position with regard to orders challenged in this writ petition, now this writ petition does not survive. On or before or around 14/9/1998, the petitioner was a member of the Executive Committee and he was elected as a Chairman. His tenure as Chairman expired after one year and, therefore, he ceased to be a Chairman on 14/9/1999. As a member of the Executive Committee of the Mandali he can hold office for three years and, therefore, he ceased to a member of the Executive Committee of the Mandali on 14/9/2001.

9.1 This writ petition could be taken up for final hearing in the month of February, 2002 and, therefore, even otherwise for the sake of arguments, if this writ petition is allowed then it will not make any effect on the position of the petitioner as a member of the Executive Committee of the Mandali because he has already ceased to be a member of the Executive Committee of the Mandali on 14/9/2001 and, therefore, also this Court is of the view that no purpose would be served by issuing writ as prayed for in para-18(A) of this writ petition.

10. In the case of Mohd. Yunus v/s. Mohd. Mustaqim and others, reported in AIR 1984 S.C. 38, it has been held in para-7 at page-40 as follows :-

> "7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority" and not to correct an error apparent on the face of the record much less an error of law."

11. In a resent decision, in the case of Ouseph Mathai and Others v/s. M.Abdul Khadir, reported in (2002) 1 Supreme Court Cases 319, it has been held in para-5 as follows :-

> "5. In Waryam Singh v. Amarnath this Court held that power of superintendence conferred by Article 227 is to be exercised more sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors. This position of law was reiterated in Nagendra Nath Bora v. Commr. of Hills Divisions & Appeals. In Babhutmal Raichand Oswal v. Laxmibai R. Tarte this Court held that the High Court could not, in the guise of exercising its jurisdiction under Article 227 convert itself into a court of appeal when the legislature has not conferred a right of appeal."

12. In view of the aforesaid legal position, this Court finds that there is no error of either fact or law committed by the respondent No.1. Looking to a very limited powers of this Court under Article 227 of the Constitution of India, this Court is of the view that this is not a case, in which this court should exercise its power of superintendence for correcting alleged error

suggested by the petitioner.

13. In view of the discussion made hereinabove, this writ petition is devoid of merits and it deserves to be dismissed and accordingly, it is dismissed. No order as earlier shall stand vacated forthwith.

sd/-

(H.H.Mehta,J.)

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Mr.Ravindra Shah, learned advocate for and on behalf of Mr.Shirish Joshi, learned advocate for the petitioner requests this Court to extend the order of interim relief granted earlier for a limited period of three weeks as the petitioner is residing at Anand and Mr.Shirish Joshi is unable to contact him. Looking to the facts and circumstances of the case request for extension of order of interim relief is refused.

sd/-

(H.H. Mehta,J.)